**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| DEBORAH L. THORNE, not individually but as COURT-APPOINTED RECEIVER OF ALPHAMETRIX, LLC AND ALPHAMETRIX GROUP, LLC, | ) | |
| Plaintiff, | ) | Case No. 14-2472 |
| v. | ) | Hon. Milton I. Shadur |
| ALEKS A. KINS, CHARLEY PENNA, GEOFF MARCUS and GEORGE BROWN, | ) | |
| Defendants. | ) | |

# AMENDED COMPLAINT

Deborah L. Thorne, as the court-appointed receiver for AlphaMetrix, LLC ("AlphaMetrix") and AlphaMetrix Group, LLC ("AMG"), for her amended complaint against defendants Aleks A. Kins, Charley Penna, George Brown, and Geoff Marcus, states:

## Allegations Common to All Counts

### Nature of the Complaint

1. This is an action to hold defendants responsible for their mismanagement and misuse of the assets of AlphaMetrix and AMG. Defendants touted those two entities as safe havens for investors who sought transparency and as beacons for consumer protection, built on a foundation of certainty and trust. Contrary to those ideals, defendants recklessly squandered AlphaMetrix and AMG resources, and some of them used their positions of trust for personal and familial gain. Their misfeasance and malfeasance ultimately led to AlphaMetrix's and AMG's financial collapse.

2. As officers of both companies, the defendants owed AlphaMetrix and AMG the duties of loyalty and due care. The defendants, however, breached those duties. Instead of exercising due care, the defendants pursued a reckless course of dealing which ultimately led to the insolvency of both entities and the subsequent appointment of a receiver for AlphaMetrix, AMG and their affiliates (collectively, the "AMG Entities"). Furthermore, in clear breach of their duty of loyalty, the defendants used AMG and/or allowed others to use AMG as their own personal piggy bank, taking out personal loans from AMG and in some cases having it pay personal expenses at the same time AMG was teetering on the brink of insolvency.

## Jurisdiction and Venue

3. On November 3, 2013, the United States Commodity Futures Trading Commission ("CFTC") filed *U.S. Commodity Futures Trading Comm'n v. AlphaMetrix, LLC,* Case No. 13-cv-7896 in this court (the "Receivership Action"), alleging violations of the Commodity Exchange Act (the “Act”), 7 U.S.C. §§ 1 *et seq*.

4. On December 18, 2013, Judge Joan H. Lefkow of this Court appointed Deborah L. Thorne (the "Receiver") as receiver for the AMG Entities. In doing so, the Court empowered the Receiver to collect all monies owed to and initiate any actions "necessary to preserve or increase the assets of" the AMG Entities. This case is brought pursuant to that authority. Accordingly, the Receiver has standing to pursue the claims asserted in this action.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1367(a) and the doctrines of supplemental and ancillary jurisdiction.

6. This district is the proper venue for this action under 28 U.S.C. § 1391(b)(1) and (2) because a substantial part of the events giving rise to this action occurred in this district.

7. This court has jurisdiction over the defendants because AMG and AlphaMetrix maintained their principal place of business in this district and, as officers of both entities, the defendants conducted business in this district. Furthermore, many of the defendants' actions and failures to act complained of herein occurred in and emanated from this district.

**The Defendants**

8. From 2005 through December 18, 2013, Aleks Kins ("Kins") was the Managing Member of AMG and the President and Chief Executive Officer of both AlphaMetrix and AMG. As Managing Member of AMG and as Managing Member of the Managing Member of AlphaMetrix, Kins appointed himself and the other defendants to their positions as officers to both companies. In his roles, Kins had the ultimate responsibility to oversee the businesses and its management. Moreover, he reserved for himself the final word on any major business decisions.

9. Charley Penna ("Penna") is Kins's best friend. From 2005 through December 18, 2013, Penna's title was Chief Risk Officer of both AlphaMetrix and AMG. In September 2013, Penna also assumed the title of Chief Compliance Officer for both entities. Kins conferred with Penna on most decisions.

10. George Brown ("Brown") is Kins's brother-in-law. From 2008 through early October 2013, Brown was the Chief Financial Officer of both AlphaMetrix and AMG. In his role as CFO of both entities, Brown had the responsibility of overseeing all financial matters.

11. Geoff Marcus ("Marcus") is Kins's wife's best friend. At all relevant times, Marcus was the Chief Strategic Officer of AlphaMetrix and AMG. As Chief Strategic Officer, Marcus was in charge of the AMG summits held in Chicago and later in Florida and Monaco.

**AMG's and AlphaMetrix's Businesses**

12. AMG was a financial technology firm and held itself out as providing transparency and "verifiable trust" to investors and managers of commodity pools and hedge funds. Kins was not the sole member of AMG; numerous third parties had membership interests and were affected by the events below.

13. Most of AMG's revenue came from AlphaMetrix, of which AMG was the sole member and manager. AlphaMetrix was a Commodity Pool Operator ("CPO"), which offered a platform that allowed investors access to commodity pools managed by a variety of commodity trading advisors ("CTAs"). AlphaMetrix and/or one of the other AMG Entities performed due diligence on CTAs. Generally, if the CTA met AlphaMetrix's criteria, one or more separate funds or commodity pools to be managed by that CTA were included on the AlphaMetrix platform. Investors could then choose a mix of pools in which to invest based on their risk tolerance and investment objectives, creating a unique blend of funds adapted for their own purposes. At the time of its collapse, AlphaMetrix had approximately 105 of such commodity pools on its platform.

14. Each commodity pool was required to pay its own costs, such as legal and organizational expenses attributable to that pool. However, investors were specifically promised in the offering materials that the pools would not be charged for any overhead or expenses of AlphaMetrix or any of the other AMG Entities.

15. AlphaMetrix was entitled to be compensated, however. But that compensation was to be through fees charged to each fund or capital account in each fund on the platform. Those fees consisted of one or more of the following: (a) a platform operating fee; (b) a sales

commission; (c) a management fee; and (d) an incentive allocation. The first three of those fees were to be calculated as a percentage of the month-end trading levels of each fund's accounts. The incentive allocation was to be calculated, generally on a quarterly basis, as a percentage of net new profit attributable to each fund's accounts. All were to be collected in arrears.

16. In turn, AlphaMetrix would negotiate agreements with the CTA for any given fund, which agreement would set the CTA's compensation for managing the fund. That negotiated compensation was then to be paid out of the fees AlphaMetrix had collected. Similarly, AlphaMetrix negotiated agreements with other entities to market the AlphaMetrix platform to investors in exchange for sales commissions, which commissions also were to be paid out of AlphaMetrix fee collections.

17. Although AlphaMetrix was responsible for the payment of commissions and CTA compensation, AlphaMetrix did not retain the monies needed to fund those obligations. Instead, every night any funds in the AlphaMetrix bank account were swept up into AMG's bank account to be commingled with AMG's own funds to be put to other uses. It was only when Kins, Brown, or Penna authorized a wire or check to be issued on the AlphaMetrix account that funds were transferred back to AlphaMetrix in order to cover that wire or check.

**AMG and AlphaMetrix Management:**
**Keeping It in the Family and Among Friends**

18. Kins chose to surround himself with family and friends at AMG and AlphaMetrix. He hired his brother-in-law Brown as CFO. Kins hired his brother Mikus Kins as Chief Business Development Officer and set his compensation at over $500,000 in 2012 and $333,000 for 2013 – a partial year. Kins hired his father, Juris Kins and his firm Davis McGrath, as outside counsel for AMG, causing them to be paid almost $100,000. He caused his mother's

company, Northlight Productions, to be hired by certain AMG Entities, resulting in almost $200,000 in fees to Northlight. Kins caused his brother John Kins's recruiting firm to be paid over $180,000 in 2013 to find a new Chief Information Officer despite the fact that the search was unsuccessful; the person hired was someone already working for AGM on a major software development project. All told, Kins used the AMG Entities to put more than $2.5 million in his family members' pockets in the form of salaries, bonuses and fees, not including his own compensation which by 2013 exceeded $720,000 per year.

19. Kins hired his best friend Penna, providing him, among other things, with over $300,000 in salary, the lease of a luxurious car and other perks. Kins also hired his wife's best friend, Marcus. By 2013, Marcus was receiving a salary of more than $280,000 and had been granted substantial loans and an ownership interest in AlphaMetrix Events, LLC. In 2013, Kins hired an old family friend, Andis Dimants, as the Chief Information Officer – the position that AMG had paid Kins's brother $180,000 to try to fill.

20. Kins made the foregoing decisions, despite the fact that such decisions – benefitting as they did his family and friends – constituted self-dealing. Despite their positions as Chief Risk Officer and CFO, Penna and Brown not only acquiesced to these transactions, but supported them, without any investigation into the fairness of the transactions to the AMG Entities.

21. Kins's habit of hiring family and friends had more than just a financial impact on the AMG Entities. It was primarily with these family members and friends – particularly Penna – that Kins managed the AMG Entities. Regardless of title or organization chart, it was the friends and family at the AMG Entities who had the most influence and were given the most

actual responsibility. For example, in all but one case, only Kins, Penna and Brown had signing or wiring privileges on the AMG Entities' bank accounts. The one exception AlphaMetrix Events; for that entity, the signatories were Kins, Penna, Brown and Marcus.

**The Pursuit of the Perfect Platform Technology**

22. In December 2010, AMG -- through its wholly-owned subsidiary, AlphaMetrix360, LLC ("AM360") -- acquired Spectrum Global Fund Administration which provided administrative services to the hedge fund industry. With that transaction, AM360 acquired Spectrum's Virtual Back Office technology platform ("VBO"), a platform that provided investment managers and their investors access to portfolio, shareholder and financial information. It also acquired $23 million in debt to White Oak Global Advisors, LLC ("White Oak"), of which AMG -- but not AlphaMetrix -- guaranteed approximately $3 million.

23. At the time, AMG touted VBO as providing the reporting depth and transparency that the AMG Entities needed. However, Kins was in fact not satisfied with the VBO platform. Only three months after acquiring VBO, Kins set out on a quest to develop a technology platform that would be more extensive, more complex and more expensive -- a platform that he called the "AlphaMetrix Global Marketplace" (the "Marketplace").

24. While choosing to launch development of the Marketplace may have been a good idea, that may have been the last considered or informed business decision made by Kins in connection with the project.

25. That is not to say that there was no information offered to Kins that might have helped inform his decision-making on the project. Originally, a group of AMG personnel was put together to help advise on the project. But after launch, anyone who pointed out how

expensive the project was becoming or who raised issues about the feasibility or usefulness of some features was no longer invited to attend. In the end, the group was cut down to only Kins, Penna and a handful of others.

26. Kins exercised little to no operational control over the project once it was launched; nor did he allow anyone else to do so. Nine different firms and over 40 individual consultants -- not to mention AMG's own employees -- were employed to work on the project with no thought as to how to manage so many consultants in order to avoid duplication, overlap and unnecessary expense. Consultants were not held to the terms of their contracts and there was no downside for consultants who did not timely and/or successfully complete its assignment. As Kins came up with ever more elaborate ideas for the platform, Kins instructed those consultants to change direction or code with no thought as to the impact of the resulting increased costs on AlphaMetrix or AMG's bottom line.

27. Nor did Kins or CFO Brown try to exercise any financial control over the project. At one point there was a $3.5 million budget prepared for the project, but no attempt was made to rein in the costs – nor did Brown prepare a revised budget -- after the project blew through the original $3.5 million number. In 2012 alone -- a year when the total gross revenues of the AMG Entities slid from $51 million to $42 million -- over $3.2 million was spent on the project. By November 2013, the cost of the project had exceeded $5.3 million. Even then, Marketplace was not fully functional. It is, therefore, not surprising that Penna described the project in a late 2013 email as "a complete failure."

28. At best, Kins and Brown in their roles as CEO and CFO – and Penna in his role as a member of the committee advising on the project -- were reckless in deciding to allow the

hemorrhaging to continue into the project without any effort at control, estimate of costs going forward or consideration as to how the drain in resources would affect AMG's financial condition. At worst, they made no decision at all, simply allowing the expenses to continue to mount with no thought as to the consequences.

**Risking Defaults on the White Oak Debt**

29. As 2012 progressed, total revenue for the AMG Entities was dropping precipitously. In part because Kins, Penna and Brown failed to rein in expenses on the Marketplace project, there was no reduction in expenses sufficient to offset the drop in revenue. As a result, it was becoming increasingly difficult for AMG and AM360 to meet the various financial covenants to which they had agreed in connection with the 2010 acquisition of Spectrum from White Oak. Instead, 2012 saw White Oak repeatedly claiming that AMG and AM360 had violated those covenants.

30. As a result, White Oak demanded concessions from AMG and AM360 in June 2012. In response to those demands, Kins signed, on behalf of AMG and AM360, documentation that increased the amount of debt for which AMG was guarantor. Kins signed that amended agreement on behalf of AMG even though White Oak provided no consideration for the changes.

**The Lavish AMG Summits**

31. Nevertheless, the difficulties AMG was having in meeting the obligations under the White Oak agreements and its deteriorating financial situation did not prompt the defendants to cut expenses or take any other steps to improve the bottom line. Instead, Kins had AMG

launch a series of extravagant summits that ended up costing the AMG Entities at least $1.6 million that they could ill afford.

32. Marcus was put in charge of the AMG summits in his capacity as Chief Strategic Officer. The first summit was held in Chicago in 2008 and designed to provide a networking opportunity for members of the hedge fund industry.

33. But beginning in 2011, Kins and Marcus decided to move the summits at great expense from Chicago to Miami, Florida, and opened them up to both investors and investment managers. These new summits were supposed to be moneymaking or at least break even events; costs were to be covered by fees and sponsorships paid by the attending investment managers and others.

34. These new summits never did make money. In fact, they lost substantial amounts of money. For several days, AMG provided lavish food, drink and entertainment to the participants, and more of the same (plus travel costs) to the defendants – all costing far more than the fees and sponsorships received.

35. This extravagance was taken to an entirely new level when Kins decided to begin holding summits in the principality of Monaco. The first such Monaco summit began on September 12, 2012, the same day that, because of alleged financial defaults, Kins signed a document purportedly granting White Oak a general release in exchange for a waiver of the purported defaults. It was also the same day that AMG was forced to borrow an additional $5 million to help meet its cash flow demands.

36. AMG employees -- including the defendants -- were flown at great expense to

Europe where they were put up in a luxurious (and expensive) Monte Carlo villa overlooking the Mediterranean. Even more expensive were the honorarium and other costs for former German Chancellor Gerhard Schroeder to speak at the 2012 Monaco summit. Participants were wined and dined at the villa and provided entertainment at the Monte Carlo Beach Club and similar venues. The summit resulted in a loss to AMG of approximately $850,000.

37. None of the defendants took any step to exercise any control over the expenses for the summits. Marcus never prepared any budgets for the summits. Brown never requested or prepared any budgets nor did he prepare financials after the fact in order to determine how much had been lost or made. Moreover, Kins and Penna never requested any such budgets or financials. Thus, each decision by Kins to hold a summit was made with inadequate financial information on the likely financial ramifications of the summit. Similarly, each decision by Kins and Marcus – and Kins was very much involved in these decisions – as to location, food, speakers, entertainment and lodging were made with similarly inadequate information on or consideration of the financial impact on AMG.

**Personal Expenses and Loans**

38. Difficulties meeting the obligations under the White Oak agreements and AMG's deteriorating financial situation also did not discourage Kins from having AMG pay various personal expenses. Nor did those financial difficulties deter any of the defendants from running up significant debt to AMG.

39. Among Kins's personal expenses that AMG paid were the lease payments on Kins's BMW, a $1,640.50 monthly expense, and travel expenses for Kins's wife and children, including the expenses for their annual trip to the Cayman Islands.

40. Moreover, from 2006 through 2010, Kins amassed a personal debt of $1,082,059 to AMG. It was only in 2011 that Kins allowed AMG to begin charging interest on that debt, and even then it was only at that the minimum rate required for the loan not to be considered a taxable event by the IRS. By March 2012, Kins had borrowed an additional $50,946.92. With interest, his total debt stood at $1,156,877.37.

41. Not surprisingly, AMG's auditor became increasingly concerned about such a large, undocumented receivable from the CEO of the company. As a result, the debt was finally documented in the form of a March 15, 2012 promissory note. The note required Kins to make monthly payments of $7,500 and a final balloon payment of the remaining principal and interest on or before December 31, 2015. Any beneficial effect of those $7,500 monthly payments on AMG's bottom line, however, was offset by the $150,000 raise Kins gave himself at the same time; a raise which after taxes would leave him enough to make the $90,000 in payments required each year under the note. During 2013, Kins's borrowings from AMG increased by another $141,666.

42. Kins approved the loans and the terms of the loans in a clear case of self-dealing. Despite their positions as Chief Risk Officer and CFO, Penna and Brown not only acquiesced but supported these self-dealing transactions without any investigation into the fairness of the loans or expenses to the AMG Entities.

43. Penna and Brown's lack of concern is perhaps not surprising in light of the fact that they too had loans from AMG, and Penna was having his car lease paid by the company. In 2013, Brown had loans totaling $41,666.66, while Penna's loans totaled $50,000. Moreover,

during 2011 through 2013, Marcus borrowed a total of $223,422. Not one penny of those amounts have ever been repaid.

**The Attempts to Improve Cash Flow**

44. Spending on the Marketplace, the summits, the personal expenses and the loans was a major reason AMG and AlphaMetrix began experiencing serious cash flow problems. Unable to pay obligations as they came due, AMG and AlphaMetrix had almost $4.2 million of payables over 90 days old as of February 2013.

45. The cash flow problems were well known to all of the defendants since at least 2012. The cash flow problems were reflected in accounts payable reports and were discussed in the so-called “Executive Committee” meetings which the defendants and other senior members of management attended every Friday.

46. To try to remedy those cash flow problems, fees charged to the accounts and pools on the AlphaMetrix platform were increased and accelerated. In addition, funds that were properly owed to the pools and to the CTAs for those pools were used for other purposes.

47. One of the strategies was to collect fees in advance, as opposed to in arrears. These improperly advanced payments were referred to by the euphemism “progress payments.” Whatever name was used, the payment of fees in advance conflicted with the representations AlphaMetrix had made to investors in the offering materials for the AlphaMetrix platform.

48. A second strategy was to unilaterally increase some of the amounts being passed through to the pools for no other reason than, as Kins put it when he instructed that the rate of pass through be increased, it was “part of our cash flow plan.”

49. AlphaMetrix was allowed to pass through costs and expenses attributable to the pools. But in 2013 what was being passed through to the pools increased dramatically over the prior year. About $2.6 million of costs had been passed through to the pools for all of 2012. By the end of October 2013, the pass throughs had reached approximately $4.6 million with two months left to the year. Part of the increase was due to expenses being passed through that had not been passed through before, such as over $415,000 in IT consulting fees, something for which the pools should never have been charged. But an even larger part of the increase was due to the fact that by October, AMG had already used the amounts charged during the prior months to meet its own cash flow needs. Accordingly, the pools were charged a second time for the costs and expenses for which the pools were responsible. Even with that second charge, a significant amount of those expenses went unpaid.

50. Pool expenses were not the only expenses that were not being paid. AlphaMetrix' obligations were also not being met as they came due. Although $22 million was swept up to AMG accounts from AlphaMetrix in 2013, AlphaMetrix defaulted on over $12 million of its obligations because much of the needed monies had instead gone to funding loans to officers, the summits and Marketplace.

51. Among the unpaid AlphaMetrix obligations were the sales commissions and CTA compensation that were to be paid out of the fees AlphaMetrix collected from the pools and investors' capital accounts in those pools. By the end of 2013, over $10 million in fees that AlphaMetrix owed to the CTAs managing those pools remained unpaid.

52. Fee rebates were another type of AlphaMetrix obligation that remained unpaid. AlphaMetrix occasionally agreed to rebate fees to investors who agreed to provide seed money

to start a pool or for other reasons. The typical rebate agreement required that AlphaMetrix rebate by reinvesting the rebated amount back into the pool on behalf of the investor. But, again, the lack of cash caused AlphaMetrix to default on its obligation to pay over $3 million of agreed-upon rebates. Although the rebates had not been deposited into the pools, Brown allowed the rebates to be reflected as a receivable to the pools. The result of this was that the account statements generated by AlphaMetrix and sent to investors reflected the deposit of rebates that had not been made.

**The End**

53. AMG's condition continued to deteriorate over the course of 2013. By June 2013, White Oak again claimed that AMG and AM360 were in violation of financial covenants made in the amended asset purchase agreement that had been signed only nine months before. The purported violations included the failure to make required payments on the White Oak debt, the failure to maintain gross revenues of at least $11.5 million in fourth quarter of 2012, and the failure to maintain balance sheet cash of at least $2 million. As a result, White Oak was able to successfully demand that Kins sign an agreement that all subsidiaries of AMG, including AlphaMetrix, would guarantee the entire debt. Again, White Oak was able to do this without providing any consideration for that change.

54. By the fall of 2013, AMG began to receive pressure from regulators to make an announcement to investors in the pools concerning the unpaid rebates and CTA compensation. On October 10, 2013, Kins finally caved to the regulatory pressure and sent a letter to all AlphaMetrix pool participants advising them that AlphaMetrix's assets consisted primarily of a receivable from AMG and that AMG was suffering from "significant cash flow issues." The letter went on to disclose that AlphaMetrix had been unable to pay rebates owed to certain

investors and fees owed to certain CTAs. Finally, the letter acknowledged that both AMG's and AlphaMetrix' liabilities "greatly exceed[ed] their liquid assets," but promised that both companies were "actively working to improve their current financial position."

55. But the suggestion that Kins had been actively working to improve those companies' financial position was belied by the defendants' actions during the preceding month.

56. First, Kins took steps to relieve himself of the obligation – as provided in his March 15, 2012 note -- to continue paying $7,500 monthly on his debt to AMG, with a final balloon payment on December 31, 2015. He prepared and signed an "Amended and Restated Promissory Note" dated September 1, 2013 which purported to amend the 2012 note. According to this new note, Kins was not required to make any payment on his debt until December 31, 2023. AMG received no consideration for this attempt by Kins to effect a unilateral change to his obligations to the company. Such a change could only exacerbate those "significant cash flow issues" Kins wrote about on October 10, 2013 and was an extraordinary case of self-dealing. If effective, it would have been unfair to both AMG and AlphaMetrix.

57. Second, AMG held its most lavish summit yet – again in Monaco and again with no budget. Although some in management had suggested that the Monaco summit be cancelled in order to save cash, Kins refused to allow its cancellation. As with the 2012 summit, no expense was spared for the two-day event, including spending over $8,000 to fly Kins first class to Monaco. Like all the other summits, Kins and Marcus made the various decisions relating to this last summit – and Kins made the decision not to cancel – without adequate information or consideration as to what impact the summit would have to AMG's and AlphaMetrix' cash flow or financial condition. No budget or information on how prior summits had performed

financially was requested, nor was any provided by Brown. The loss on the 2013 event was approximately $800,000.

58. Third, Kins took steps to change the terms of the other defendants' debts to the company. Without established payment terms, the defendants' debts were demand obligations. But shortly before the October 10 letter was sent out, Kins sent those three defendants – and they executed -- promissory notes that did not require any payments until December 31, 2023. There was no consideration for any of the purported changes to the terms of the loans to any of the defendants; none of Kins, Penna, Brown or Marcus conditioned their continued employment on a change in terms. The attempted changes, if effective, would have been unfair to AMG. No disinterested officer of AMG accepted such a change.

59. Whatever efforts Kins, Penna, and Marcus may have made after October 10, 2013 (Brown was fired as of that date, so was not around to make any effort) were inadequate to turn around AMG's financial situation. After Kins's October 10, 2013 letter and regulatory action taken by the National Futures Association a week and a half later, many investors began requesting full redemptions of their investments. Then, on November 4, the CFTC initiated its action against AMG alleging violations of the Commodity Exchange Act. The next day, a corporate monitor was appointed and six weeks later the corporate monitor was converted into a receiver.

60. As a result of the foregoing, AlphaMetrix and AMG sustained over $19 million in damages and have been rendered insolvent.

61. The Receiver has received claims against AMG and AlphaMetrix for more than $3 million in rebates, more than $7 million in CTA compensation and from other unsecured

creditors in excess of $19 million. Leaving aside the value of the causes of action asserted herein, the AMG Entities do not have the assets with which to satisfy those claims.

**Count I**
**Action on Behalf of Both Companies Against Kins for Breach of Fiduciary Duty – Duty of Due Care**

62. Kins owed AMG and AlphaMetrix a duty of due care and failed to fulfill that duty.

63. Kins failed to implement proper controls over spending, instead squandering money in connection with the development of the Marketplace, on lavish summits, loans to himself and the other defendants, payment of his own personal expenses and the full employment of his family and friends.

64. These expenditures were not the result of the reasoned, informed and disinterested decision-making that is required of a fiduciary and an officer. Instead, some – such as many of the expenses in connection with the development of the Marketplace – were simply allowed to happen due to there being no attempt made at controlling those expenses. The others were the result of decisions made with no consideration of and little information on the costs, benefits or ultimate impact on AMG, AlphaMetrix, the pool participants or the other AMG members.

65. As a result, Kins exposed AMG to demands by White Oak for concessions on its loan to AM360, including increased security and guarantees by AMG. Kins's conduct also resulted in such losses and lack of cash flow that AMG and AlphaMetrix were rendered insolvent which in turn resulted in the CFTC bringing its action for failure to pay rebates to certain investors and the ultimate collapse of the companies.

66. As a result of the foregoing, AMG and AlphaMetrix have incurred damages in excess of $19 million.

**Count II**
**Action on Behalf of Both Companies Against Penna for**
**Breach of Fiduciary Duty – Duty of Due Care**

67. Penna owed AMG and AlphaMetrix a duty of due care and failed to fulfill that duty.

68. Kins discussed most of the foregoing decisions with Penna, and Penna had the opportunity and duty to make sure Kins had the requisite information and advice. Yet Penna made little effort to make sure Kins had the necessary information whether he was interested or not to make informed decisions or to persuade Kins to control expenses. Even when he was put in charge of cost cutting efforts in 2013, Penna did little to encourage Kins to reduce spending on the summits, to increase controls over the Marketplace development project or otherwise decrease expenditures. Nor did he provide Kins with the information or tools to do so.

69. As a result, Kins was allowed -- without any resistance from the person in the best position to influence him -- to expose AMG to increased demands by White Oak and to such losses that AMG and AlphaMetrix were rendered insolvent.

70. As a result of the foregoing, AMG and AlphaMetrix have incurred damages in excess of $19 million.

**Count III**
**Action on Behalf of Both Companies Against Brown for**
**Breach of Fiduciary Duty – Duty of Due Care**

71. Brown owed AMG and AlphaMetrix a duty of due care and failed to fulfill that

duty.

72. In charge of the financial affairs of AMG and AlphaMetrix, Brown failed to implement any financial controls over the Marketplace development project, the summits or expenditures generally. Moreover, he failed to ensure that budgets and financials were prepared, maintained and provided to Kins in order that Kins would have adequate information whether he wanted it or not in connection with the foregoing decisions. Similarly, his failure to ensure that budgets and financials were generated in connection with the summits and provided to Marcus ensured that Marcus had inadequate information with which to make decisions as to the summits.

73. As a result, AMG was exposed to increased demands by White Oak and to such losses that AMG and AlphaMetrix were rendered insolvent.

74. As a result of the foregoing, AMG and AlphaMetrix have incurred damages in excess of $19 million.

## Count IV
## Action on Behalf of Both Companies Against Marcus for Breach of Fiduciary Duty – Duty of Due Care

75. Marcus owed AMG and AlphaMetrix a duty of due care and failed to fulfill that duty.

76. Marcus's decisions regarding the summits – both what AMG would spend on what and what would be paid by the participants – were made without even the minimal financial information needed for informed decision-making. Without a budget for the summit being planned or financials for the past summit, Marcus had no way to evaluate the impact of the decisions he was making with Kins on the financial health of AMG.

77. These decisions resulted in losses to AMG and AlphaMetrix of more than $1.5 million.

**Count V**
**Action on Behalf of Both Companies Against Kins, Brown, Penna and Marcus for Breach of Fiduciary Duty – Duty of Loyalty**

78. Kins, Brown, Penna and Marcus owed both companies a duty of loyalty and yet failed to fulfill that duty.

79. Kins breached that duty through a series of self-dealing transactions, including the hiring of family and friends, payment of his personal expenses, loans, and then trying to avoid repaying his loans by executing a successor note which effectively would mean he would never had to repay the more than $1 million he owes.

80. Brown, Penna and Marcus similarly breached their duty of loyalty by taking out loans from AMG and seeking to avoid repayment of those loans by executing notes that purported to delay the need for payment over 10 years in the future.

**Count VI**
**Action on Behalf of AMG Against Kins on 2012 Note**

81. Since September 2013, Kins has not made any of the required monthly payments on his March 15, 2012 promissory note and is therefore in default on that note.

82. The Receiver, on behalf of AMG, gave notice of that default on March 31, 2014, and Kins has not cured that default.

83. The 2013 “Amended and Restated Promissory Note” did not amend the original 2012 note because the advancement of monies was not conditioned on that amended note, no

disinterested officer accepted the amended note on behalf of AMG and no consideration existed for the change in payment terms purportedly effected by the amended note.

84. Accordingly, pursuant to the terms of the March 15, 2012 note, the Receiver hereby declares the entire balance of $1,038,598, together with interest from September 2013, immediately due and payable.

**Count VII**
**Action on Behalf of AMG Against Kins for 2013 Debt**

85. Kins borrowed an additional $141,666 from AMG during 2013 and has made no payments whatsoever on that amount.

86. The $141,666, together with interest, is currently due and payable.

**Count VIII**
**Action on Behalf of AMG Against Penna on 2013 Debt**

87. Penna borrowed $50,000 from AMG in 2013 and has made no payments on said debt.

88. The 2013 promissory note signed by Penna purportedly governing the loan did not constitute a contract between AMG and Penna with regard to the payment terms of his loan because the advancement of monies was not conditioned on the note, no disinterested officer accepted the note on behalf of AMG and no consideration existed for the change in payment terms purportedly effected by the note.

89. The $50,000, together with interest, is currently due and payable.

**Count IX**
**Action on Behalf of AMG Against Brown on 2013 Debt**

90. Brown borrowed $41,666.66 from AMG in 2013 and has made no payments on that debt.

91. The 2013 promissory note signed by Brown purportedly governing the loan did not constitute a contract between AMG and Brown with regard to the payment terms of his loan because the advancement of monies was not conditioned on the note, no disinterested officer accepted the note on behalf of AMG and no consideration existed for the change in payment terms purportedly effected by the note.

92. The $41,666.66, together with interest, is currently due and payable.

**Count X**
**Action on Behalf of AMG Against Marcus on Debt**

93. Marcus borrowed $223,442 from AMG and has made no payments on that debt.

94. The 2013 promissory note signed by Marcus purportedly governing the loan did not constitute a contract between AMG and Marcus with regard to the payment terms of his loan because the advancement of monies was not conditioned on the note, no disinterested officer accepted the note on behalf of AMG and no consideration existed for the change in payment terms purportedly effected by the note.

95. The $223,442, together with interest, is currently due and payable.

**Count XI**
**Action on Behalf of Both Companies Against Kins, Brown, Penna and Marcus for Unjust Enrichment from Loans**

96. The 2013 loans to Kins, Brown, Penna and Marcus provided a benefit to each of

them in the amount of those loans.

97. Those loans were funded with monies swept out of AlphaMetrix's accounts into AMG's accounts, which monies were needed by AlphaMetrix and AMG to pay their bills as they came due.

98. The loans were unfair to AMG and worked a detriment to both companies.

99. It would be unjust for Kins, Brown, Penna and Marcus to retain the benefit of those funds.

**Count XII**
**Action on Behalf of Both Companies Against Kins for**
**Unjust Enrichment from Payment of Personal Expenses**

100. Kins routinely caused AMG, using funds swept up from AlphaMetrix, to pay personal expenses that he had incurred, including but not limited to, lease payments on his BMW and travel expenses for his family.

101. The monies spent on Kins' personal expenses were needed by both AMG and AlphaMetrix to pay their bills as they came due.

102. It would be unjust for Kins to retain the benefit of those payments.

**Count XIII**
**Action on Behalf of AMG Against Kins for**
**Breach of LLC Agreement and Covenant of Good Faith and Fair Dealing**

103. In the alternative, Kins's conduct was in breach of the implied covenant of good faith and fair dealing in the AMG Operating Agreement.

104. Kins's conduct in making decisions with no financial information and no

consideration of the financial ramifications of that conduct, together with his repeated instances of self-dealing to benefit himself, his family and friends, was so unreasonable and arbitrary as to deprive AMG and the other members of the benefit of their bargain.

Therefore, for the reasons stated above, AMG and AlphaMetrix respectfully ask the court to award them damages as follows:

(a) as against all defendants jointly and severally for the damages sustained by AMG and AlphaMetrix as a result of the conduct outlined above;

(b) as against Kins,

(1) for $1,180,264, together with interest from September 2013, on his loans; and

(2) for all amounts paid for his personal expenses;

(c) as against each of Brown, Penna and Marcus for the principal balance of their loans together with interest thereon;

(d) prejudgment interest; and

(e) all other just and proper relief.

Dated: July 21, 2014

Respectfully submitted,

DEBORAH L. THORNE, not individually but as COURT-APPOINTED RECEIVER OF ALPHAMETRIX, LLC and ALPHAMETRIX GROUP, LLC

By: /s/ Deborah L. Thorne
Temporary Equity Receiver

Deborah L. Thorne
Alison Conlon
BARNES & THORNBURG LLP
One North Wacker Drive, Suite 4400
Chicago, IL 60606
Telephone: (312) 214-8307
dthorne@btlaw.com
aconlon@btlaw.com

and

Anne N. DePrez
BARNES & THORNBURG LLP
11 S. Meridian Street
Indianapolis, IN 46204
Telephone: (317)236-1313
adeprez@btlaw.com

## CERTIFICATE OF SERVICE

I, Deborah L. Thorne, the undersigned attorney, certify, pursuant to penalties of perjury, that I caused the **Amended Complaint** to be served upon all parties appearing on the ECF service list by electronic filing on this 21st day of July, 2014:

Brett Michael Doran doranb@gtlaw.com, CHILitDock@gtlaw.com

Christopher C. Kendall ckendall@ckendall.com

Crystal Lee Leighton cleighton@mwe.com

Daniel M. Meyers daniel.meyers@kayescholer.com

Elizabeth Rose Pozolo Elizabeth.Pozolo@kayescholer.com, maondil@kayescholer.com

Jonathan E Green jonathan.green@kayescholer.com

Kaitlin Patricia Sheehan ksheehan@mwe.com

Kevin Michael Flynn kevin@kmflynnlaw.com

Peter Beauregard Allport pallport@mwe.com

Steven Marc Malina malinas@gtlaw.com, CHILitDock@gtlaw.com, downesm@gtlaw.com

Steven Samuel Scholes sscholes@mwe.com, kadavies@mwe.com

/s/ *Deborah L. Thorne.*

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